

PROCUREMENT POLICY BOARD
Meeting Minutes

Monday, August 4, 2014, 10:30 p.m.

Kalanimoku Building
1151 Punchbowl Street, Conference Room 410, Honolulu, Hawaii 96813

web-video conference connection with:
County of Maui Building
South High Street, Room 616, Wailuku, Hawaii 96793

Members Present

Ronald Hirano
Greg King, Chair (via Adobe Connect)
Dean Seki, Secretary
Kathy Suzuki-Kitagawa (via Adobe Connect)

Staff

Sarah Allen, State Procurement Office (SPO)
Stella Kam, Department of the Attorney General
Hōukūlei Lindsey, SPO
Dianne Matsuura, Department of Accounting and General Services
Michael Ong, SPO
Robyn Pfahl, SPO
Mara Smith, SPO
Donna Tsuruda-Kashiwabara, SPO

Others

David Ching, Hawaii Procurement Institute
Lance Inouye, General Contractors Association of Hawaii (GCA)
Melanie Martin, Department of Transportation
Ken Takenaka, GCA

I. Call to Order

Chair Greg King called the meeting to order at 10:34 a.m.

II. Approval of Minutes of Meeting on April 17, 2014.

- PPB approved the minutes of its April 17, 2014, meeting (Attachment 1).
 - Ronald Hirano motioned to approve minutes. Dean Seki seconded the motion. Motion passed unanimously.

III. Executive Session Pursuant to HRS §92-5(a)(2)

PPB met privately in an executive session pursuant to HRS §92-5(a)(2). After returning to regular session, Chair Greg King reported that the PPB discussed personnel compensation issues.

- PPB approved a motion to submit a letter to the Governor recommending an increase in the State Procurement Office Administrator's salary pursuant to the 2013 Salary Commission Memo.
 - Motion was made by Chair. Motion was seconded by Mr. Seki. Motion passed unanimously.

IV. Professional Services

The posted agenda for PPB's August 4, 2014, meeting included a typo in "Professional Services – Interim Rule Repealing Hawaii Administrative Rules § 3-122-69". The Professional Services subsection was intended to be § 3-122-66. The unintended consequences of the "-69" typo does not provide adequate public notice pursuant to Hawaii sunshine laws (HRS §92-1), which requires a six (6) day posting.

- PPB decision making will be postponed to the next PPB meeting to provide adequate notice.
- Discussion on Professional Services will be held under new business today.

V. Past Performance – HCR 176 (SLH 2014) Legislative Resolution Update

House Concurrent Resolution 176 (S.L.H. 2014) requested that the State Procurement Office ("SPO") conduct a study on the feasibility of requiring **past performance** as a factor in awarding *any* public contract, including low-bid invitation for bid ("IFB") contracts.

SPO Procurement Policy Specialist Robyn Pfahl has been researching past performance and implementation strategies for obtaining metrics and formulating recommendations as a response to House Concurrent Resolution 176 (S.L.H. 2014). Ms. Pfahl has also been working with government officials, contractors, and other procurement policy stakeholders to gather and share experiences, perceptions, opinions, and ideas on past performance accountability for the report. SPO's actions to respond to HCR 176 thus far have included:

- 1) Research on procurement statutes and rules applications and compliance;
- 2) Research on Federal and state past performance initiatives and implementation tools;
- 3) Stakeholder Focus Groups to identify specific concerns and brainstorm ideas;
 - a) Contractor and Government Focus Group held July 11, 2014
 - b) Attorney Focus Group Scheduled August 5, 2014 with the Hawaii Procurement Institute
 - c) Ongoing Discussions with Stakeholders and Lobbyists
- 4) Past Performance perception and experience survey [SPO IFB Past Performance Survey LINK](#) was developed and distributed through posting on SPO website as well as email announcements to:

- a) All CPOs
 - b) Legislators
 - c) Offices of the Governor & Lieutenant Governor
 - d) SPO Staff
 - e) Educators
 - f) Unions & Trade Organizations
 - g) Vendors & Buyers Registered with Hawaii Compliance Express (8,878 individual emails)
- 5) Drafting a white paper to include research outcomes, gathered stakeholder input, and recommendations on past performance accountability and implementation feasibility.

SPO is continuing to formulate the HCR report and record stakeholder meetings and survey responses, which totaled 807 as of August 4, 2014. SPO plans to have another update with recommendations to be considered by the next PPB meeting.

VII. New Business

A. Professional Services

HAR §3-122-66 has been **invalidated** by the Hawaii Supreme Court in Asato v. Procurement Policy Board, Hawaii, 2014 (pending publication). The Court found that there was legislative intent to require a “minimum of three persons” to respond to a solicitation for procurement of professional services under the HRS §103D-304 process. The Court held that HAR § 3-122-66, Waiver to Requirement for Procurement of Professional Services is **invalid** because it is in direct conflict with the clear mandate of HRS 103D-304(g) which required that “[t]he selection committee shall rank a **minimum of three persons...**”, and therefore the Procurement Policy Board “exceed[ed] the scope of authority give by the legislature to [the Board].”

SPO issued **Procurement Circular No.2014-09** on July 17, 2014, explaining that the HAR §122-66 is no longer available to be utilized by procurement officers and providing guidance to conducting professional services method of procurement. SPO Purchasing Supervisor Donn Tsuruda-Kashiwabara, SPO Procurement Policy Specialist Robyn Pfahl, and SPO Administrator Sarah Allen provided background information.

- 1) SPO is recommending that the PPB **issue interim rules**, pursuant to HRS §103D-202, by a **Procurement Directive**, pursuant to HAR § 3-122-2, to **repeal HAR §122-66**.
- 2) Because of the clerical error on the August 4, 2014, agenda, PPB is deferring decision making until the next PPB meeting.
- 3) SPO also plans to submit a legislation request in 2015 that will allow HAR § 3-122-66 to be reinstated after legislative approval.

B. Inventory

SPO Inventory Specialist Michael Ong reported that the statute and rules are inconsistent, making inventory management very difficult. SPO is requesting PPB engage in rulemaking changes to align HAR §3-130 with the law stated in HRS §103D -1204 so that SPO can improve inventory management practices.

- HRS §103D-1204 places inventory responsibility with “**The head of the department, or the head of any board, commission, agency, bureau, or office of the State**” as responsible for the “accountability, protection, maintenance, and proper use of all state property pertaining to their office or department”
- HAR §3-130-3 places inventory responsibility with “**The chief procurement officer**, or the head of any state governmental unit that is not by law under the control of a chief procurement officer” for “all state property in the possession, custody, control, or use of the unit or jurisdiction, including the several counties, which the officer or head presides.”
- SPO is recommending that the PPB **issue interim rules**, pursuant to HRS §103D-202, by a **Procurement Directive**, pursuant to HAR § 3-122-2, to **amend HAR §130** to place inventory responsibility with the same language as the HAR “**The head of the department, or the head of any board, commission, agency, bureau, or office of the State.**”

Ms. Allen explained that, as a chief procurement officer (CPO), she and other CPOs have to sign-off on all of their jurisdiction’s approval of disposal applications. CPOs therefore must sign-off on disposals of inventory items that they do not touch or see because it is outside their logistical purview. This is a direct conflict of statute and administrative rules, creates confusion on duties and responsibilities, as well as creates excessive paperwork.

C. Source Selection

Ms. Allen discussed the difficult application of the current law and administrative rules in the source selection process of the request for proposal (RFP) process. Pursuant to HAR Subchapter 6, Complete Sealed Proposals, and specifically HAR §3-122-52, there may be no direct communications between procurement officers and offerors during the RFP process until after the creation of a “priority list.” Then, “discussions [are] limited to only “priority-listed offerors,” whom are “those responsible offerors who are selected for the priority list.” Because any type of direct communication is barred before creating the priority list, procurement officers don’t have any opportunity to clarify apparent mistakes in offers that prevent an offeror to become a “priority-listed offeror.”

SPO is creating language for administrative rule changes, which would allow for some type of clarifying communication before “discussions,” to make logical determinations of responsible offerors, to get the right offerors into the pool of potentially acceptable proposals, and follow into full “discussions” as needed.

D. Procurement Policy Board General Information

- 1) PPB MEMBERSHIP VACANCIES: Currently, there are three (3) vacancies on PPB.
 - a. Waiting on Governor to appoint two (2) individuals to the nominating committee.

- b. The Governor's Office of Boards and Commissions has authorized two current board members to remain on board as "holdovers" if those members agree.
- 2) PPB MEMBERSHIP QUALIFICATIONS: Mr. Seki expressed concern that the current specific membership qualifications are very restrictive, making finding new members very difficult. Chair King agreed and suggested that the PPB look at creating a new legislative initiative to expand the leadership and background qualifications of PPB members.
- 3) PPB OFFICE ELECTIONS: PPB is due for elections of officers, and will plan on holding office elections at the next PPB meeting.
- 4) PPB INTERNAL DOCUMENTS: SPO does not have any official bylaws. All government board are bound by statutes and administrative rules for operational procedures. SPO will pull together a PPB guide to statutory and administrative rule provisions governing the SPO, to create an internal reference working document for institutional memory.

XI. Meeting Schedule

The next PPB meeting will be scheduled as needed.

XII. Announcements

New SPO Assistant Administrator

Paula Youngling is the new Assistant Administrator and was introduced to the PPB. Ms. Youngling was previously the head of procurement of the Honolulu Authority for Rapid Transportation (HART). Paula's experience includes federal and state government procurement through the U.S. Air Force and various Department of Defense contractors.

XIII. Adjournment

The meeting was adjourned at 11:23am.

Respectfully submitted,

Dean Seki, Secretary
Procurement Policy Board

Attachment: August 4, 2014, PPB Agenda